

APPEAL NO. 042041
FILED SEPTEMBER 29, 2004

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on July 20, 2004. The hearing officer resolved the disputed issues by deciding that: (1) the date of injury (DOI) is _____; (2) the respondent (claimant) sustained a compensable repetitive trauma injury; (3) the appellant (self-insured) is not relieved from liability under Section 409.002 because the claimant timely notified the employer pursuant to Section 409.001; and (4) the claimant only had disability beginning on February 4 and continuing through March 19, 2004. The self-insured appealed, disputing the DOI, compensable injury, and timely notice determinations. The self-insured contends that the hearing officer failed to apply the legally correct standard for an occupational disease, which includes a compensable repetitive trauma. The claimant responded, urging affirmance of the hearing officer's determinations. The claimant contends that the hearing officer's findings and conclusions were legally correct and supported by the preponderance of the credible evidence.

DECISION

Affirmed.

INJURY

Section 401.011(34) defines occupational disease as including repetitive trauma injuries. Whether the claimant's work activities were sufficiently repetitive to cause injury to both of her wrists and hands was a factual determination for the hearing officer to resolve. It was the hearing officer's prerogative to believe all, part, or none of the testimony of any witness, including that of the claimant. Aetna Insurance Company v. English, 204 S.W.2d 850 (Tex. Civ. App.-Fort Worth 1947, no writ). The hearing officer was persuaded by the evidence that the claimant's work activities were sufficiently repetitive to cause injury, noting that the claimant worked full time taking calls, writing information down from the caller, and then entering it into the computer. A job analysis was also in evidence which indicated that the claimant's position required that the computer be used 75% of the time. In Texas Workers' Compensation Commission Appeal No. 961008, decided July 1, 1996, the Appeals Panel discussed and considered Texas case law on repetitive trauma injuries and stated that "it is not required that it be proven the disease is inherent in or present in a greater degree when the evidence sufficiently proves that repetitive traumatic activities occurred on the job and there is a causal link between the activities and the harm or injury." In the instant case, the claimant's testimony and medical evidence provided sufficient proof to support the claimant's claim. We find no merit in the self-insured's assertion that the hearing officer applied the wrong legal standard. Nothing in our review of the evidence indicates that the hearing officer's compensability determination is so against the great weight and

preponderance of the evidence as to be clearly wrong or manifestly unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986).

DATE OF INJURY

Under Section 401.011(34), an occupational disease includes repetitive trauma injuries, which is what the claimant is alleging here. The date of an occupational disease is a question of fact. Texas Workers' Compensation Commission Appeal No. 94415, decided May 23, 1994. Section 408.007 provides that the DOI for an occupational disease is the date on which the employee knew or should have known that the disease may be related to the employment. We stated in Texas Workers' Compensation Commission Appeal No. 992783, decided January 26, 2000, "[t]he date is somewhat of a 'moving target,' but need not be as early as the first symptoms nor as late as a definitive diagnosis." Applying our standard of review set out above, we find sufficient evidence to support the hearing officer's factual determination concerning the DOI. This is so even though another fact finder might have drawn other inferences and reached other conclusions. Salazar v. Hill, 551 S.W.2d 518 (Tex. Civ. App.-Corpus Christi 1977, writ ref'd n.r.e.).

TIMELY REPORT OF INJURY

Section 409.001(a)(2) provides, in relevant part, that an employee or a person acting on the employee's behalf shall notify the employer of an injury not later than the 30th day after the date on which (in cases of an occupational disease) the employee knew or should have known that the injury may be related to the employment. The 1989 Act provides that a determination by the Texas Workers' Compensation Commission that good cause exists for failure to provide notice of injury to an employer in a timely manner or actual knowledge of the injury by the employer can relieve the claimant of the requirement to timely report the injury. Section 409.002. The burden is on the claimant to prove the existence of notice of injury. Travelers Insurance Company v. Miller, 390 S.W.2d 284 (Tex. Civ. App.-El Paso 1965, no writ).

In the present case, the issue of timely notice really turns on the issue of the date of the injury. Having affirmed the hearing officer's DOI determination, we likewise affirm the hearing officer's determination that the claimant timely reported her injury.

DISABILITY

The claimant had the burden to establish that she had disability as defined in Section 401.011(16). This issue presented a question of fact for the hearing officer to resolve. The claimant testified that she did not work after February 4, 2004, until she was released to return to work. There were Work Status Reports (TWCC-73) in evidence which evidenced that the claimant's doctor placed the claimant on restrictions. There is sufficient evidence to support the hearing officer's disability determination.

We affirm the decision and order of the hearing officer.

The true corporate name of the insurance carrier is **STATE OFFICE OF RISK MANAGEMENT (a self-insured governmental entity)** and the name and address of its registered agent for service of process is

For service in person the address is:

**JONATHAN BOW, EXECUTIVE DIRECTOR
STATE OFFICE OF RISK MANAGEMENT
300 W. 15TH STREET
WILLIAM P. CLEMENTS, JR. STATE OFFICE BUILDING, 6TH FLOOR
AUSTIN, TEXAS 78701.**

For service by mail the address is:

**JONATHAN BOW, EXECUTIVE DIRECTOR
STATE OFFICE OF RISK MANAGEMENT
P.O. BOX 13777
AUSTIN, TEXAS 78711-3777.**

Margaret L. Turner
Appeals Judge

CONCUR:

Judy L. S. Barnes
Appeals Judge

Gary L. Kilgore
Appeals Judge